

U. S. DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION

VALENTINO GONZALES  
Petitioner

CRIMINAL ACTION  
NO. 04-10022-04

VERSUS

UNITED STATES OF AMERICA  
Respondent

JUDGE DEE D. DRELL  
MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

This matter was referred to the undersigned Magistrate for report and recommendation.

Statement of the Claim

Before the court is a motion to vacate, set aside or correct sentence filed pursuant to 28 U.S.C. §2255 by pro se petitioner, Valentino Gonzales ("Gonzales"), on October 4, 2006. (Doc. Item 148). Gonzales is attacking the imposition of a 290 month sentence of imprisonment by the United States District Court for the Western District of Louisiana, Alexandria Division, on his 2005 conviction pursuant to a guilty plea to conspiracy to murder pursuant, 18 U.S.C. §1117. Gonzales was sentenced to 290 months to run consecutively with any sentence he was currently serving followed by 60 months supervised release, and he was to pay a \$100 Criminal Victim Fund Assessment and a \$3,000 fine. (Doc. 119, 128).

The sole issue raised by Gonzales in his motion is whether he was denied the right to appeal due to ineffective assistance of

counsel because his counsel failed to perfect and file an appeal. However, counsel named in the motion did in fact file a notice of appeal (Doc. Item 130), withdrew as counsel for Gonzales to ensure that the appeal was handled by an attorney who was experienced in handling the appeal (Doc. Items 129, 134), and the United States Court of Appeals for the Fifth Circuit, after considering the record hearing Gonzales' counsel's argument, affirmed the sentence imposed by the District Court (Doc. Item 150). Accordingly, the one and only ground for relief is moot.

#### Conclusion

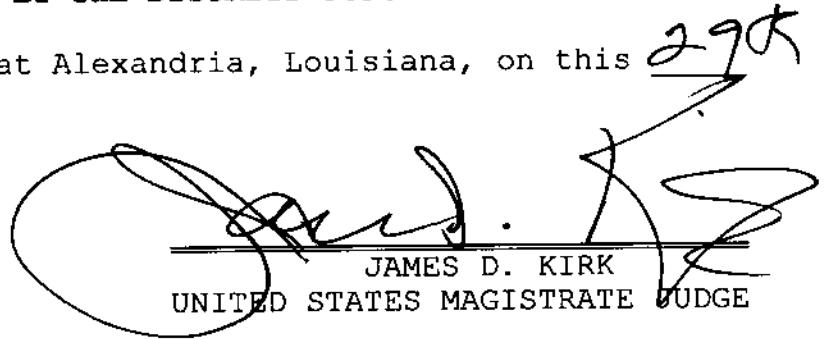
Accordingly, IT IS RECOMMENDED that Gonzales' motion to vacate, set aside or correct sentence be DENIED AND DISMISSED WITH PREJUDICE.

Under the provision of 28 U.S.C. §636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections with **ten (10) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the district judge before he makes a final ruling.

**A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT**

WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Alexandria, Louisiana, on this 29<sup>th</sup> day of March 2007.



JAMES D. KIRK  
UNITED STATES MAGISTRATE JUDGE